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May 3, 1996

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Via Federal Express

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: In the Matter of Implementation of Section 207 of the
Telecommunications Act of 1996

Dear Sir/Madam:

Enclosed please find the Comments of Huckleberry Community Association, Inc. regarding the above referenced matter. Also included are eleven copies. We would request that copies be provided to each of the Commissioners.

Thank you for your assistance and if you have any questions, please do not hesitate to contact me.

Sincerely,



S. Campbell Bradford

SCB

cc: Ralph E. Smith, with enclosure
Gloria Lockridge, with enclosure

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
Implementation of Section 207)
of the Telecommunications)
Act of 1996.)
_____)

CS Docket No. 96-83

FCC 96-151

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COMMENTS OF HUCKLEBERRY COMMUNITY ASSOCIATION, INC.

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Huckleberry Community Association, Inc. ("HCA"), a non-profit Florida corporation, files these comments in opposition to subsection (c) of the proposed rule.

1. HCA is a neighborhood association charged with the responsibility for the administration, management and operation of a neighborhood in Orange County, Florida.

2. The neighborhood is a deed-restricted community subject to the conditions and restrictions set forth in the Amended and Restated Declaration of Master Covenants, Conditions, and Restrictions of Waterford Lakes ("Declaration").

3. The Declaration has been recorded and applies equally to each lot within the neighborhood. The Declaration contains a provision requiring express written consent of an Architectural Review Committee prior to erection or maintenance of any exterior radio, television, dish antenna, or other antenna or device.

4. Every purchaser was aware of this restriction before purchasing his or her lot. Compliance with this provision is a

contractual obligation of each land owner within the neighborhood.

5. Moreover, each land owner purchased his or her lot relying on the fact that the other owners within the neighborhood would also be subject to the same restrictions.

6. Subsection (e) of the proposed rule is overly broad and impairs contractual relationships. Section 207 of the Telecommunications Act charges the Federal Communications Commission ("FCC") with the responsibility of developing "regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signal, multichannel multipoint distribution service, or direct broadcast satellite service."

7. The FCC asserts two federal interests at stake in implementing section 207: access to a broad range of video programming services and fostering full and fair competition among video programming services. The rule as proposed goes beyond what is necessary to satisfy these two interests.

8. A per se prohibition against non-governmental restrictions does accord any consideration to the contractual obligations and mutual agreements of parties. Restricting the placement or size of an antenna does not impair a consumers ability to receive video programming services. The restrictions merely affect how a homeowner receives the video programming services. The homeowners retain access to a full panoply of

video programming services, as well as the continued benefit of their contractual expectations, ensured aesthetic surroundings, and protection of home values.

9. Homeowners choose to purchase land in deed-restricted communities for a variety of reasons. Many depend on the enforcement of the Declaration to ensure the integrity of the neighborhood. The deed-restrictions are contractual obligations into which the homeowners enter knowingly and willingly. Just as other federal interests can be waived or contractually altered,¹ these individuals have agreed to restrict their access to satellite communications.


10. The FCC's attempt to trump existing restrictions, therefore, is particularly onerous. Many individuals have relied on their existing deed-restrictions and will be significantly impacted by the proposed rule. Affording no deference to individual contractual agreements violates the very tenets of freedom and fairness that the federal government was designed to protect.

Huckleberry Community Association, Inc. respectfully requests that the FCC reconsider subsection (c) of the proposed rule and provide entities with the ability to enforce contractual

¹ The right to a jury trial, which protects the paramount individual interest--personal freedom, can be waived.

obligations which do not impair access but only procedurally govern how access is obtained.

Dated this 3 day of May, 1996.


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